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Board of Vocational Nursing
and Psychiatric Technicians

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BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2006-2106

DANIEL ROSETE GABRIEL
10862 Ivoryton Way
Mather, California 95655
Vocational Nurse License No. VN 184810

A C C U S A T I O N

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

2. On or about June 5, 1998, the Board issued Vocational Nurse License Number VN 184810 to Daniel Rosete Gabriel ("Respondent"). Respondent's vocational nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2011, unless renewed.

STATUTORY AND REGULATORY PROVISIONS

3. Business and Professions Code ("Code") section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with Code section 2875) of the Vocational Nursing Practice Act.

1 4. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a
2 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
3 period within which the license may be renewed, restored, reissued or reinstated. Under Code
4 section 2892.1, the Board may renew an expired license at any time within four years after the
5 expiration.

6 5. Code section 2878 states, in pertinent part:

7 The Board may suspend or revoke a license issued under this chapter [the
8 Vocational Nursing Practice Act (Bus. & Prof. Code § 2840, et seq.)] for any of the
following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
10 following:

11 (1) Incompetence or gross negligence in carrying out usual nursing
functions . . .

12 6. California Code of Regulations, title 16, section ("Regulation") 2519 states:

13 As set forth in Section 2878 of the Code, gross negligence is deemed
14 unprofessional conduct and is a ground for disciplinary action. As used in Section
15 2878 'gross negligence' means a substantial departure from the standard of care
16 which, under similar circumstances, would have ordinarily been exercised by a
competent licensed vocational nurse, and which has or could have resulted in harm to
the consumer. An exercise of so slight a degree of care as to justify the belief that
there was a conscious disregard or indifference for the health, safety, or welfare of the
consumer shall be considered a substantial departure from the above standard of care.

18 **COST RECOVERY**

19 7. Code section 125.3 provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 8. At all times relevant herein, Respondent was employed as a licensed vocational nurse
4 at El Camino Care Center, a long term care facility for the elderly located in Carmichael,
5 California. J. N., an 83 year old male, was a patient at the facility and had diagnoses of
6 hypertension, congestive heart failure, Parkinson's disease, spinal stenosis, dementia with
7 psychosis, hyperlipidemia, history of pneumonia, DVT (deep venous thrombosis), and CVT
8 (cerebrovascular accident).

9 9. On or about August 1, 2006, at approximately 9:55 a.m., a CNA (certified nursing
10 assistant), reported to Respondent that J. N. was complaining of shortness of breath. Respondent
11 assessed J. N., confirmed that J. N. was experiencing shortness of breath, and began
12 administering a nebulized breathing treatment to J. N.¹ J. N. had not had an episode of shortness
13 of breath or received a breathing treatment since approximately March 22, 2006. Respondent
14 monitored J. N. at the commencement of the treatment, but then left the room to begin
15 administering medications to other patients.

16 10. Respondent is subject to disciplinary action pursuant to Code section 2878,
17 subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about August 1, 2006,
18 Respondent was guilty of gross negligence within the meaning of Regulation 2519 in his care of
19 J. N., as follows:

20 a. Respondent failed to notify his supervisor or J. N.'s physician of the change in J. N.'s
21 condition, the episode of shortness of breath.

22 b. Respondent failed to stay with J. N. during the breathing treatment despite the change
23 in J. N.'s condition as above, and contrary to the facility's policy and procedure for nebulized
24 treatments.

25 c. Respondent failed to document J. N.'s condition prior to and during the breathing
26 treatment.

27 ¹ J. N.'s physician had ordered Albuterol 0.5 cc with 1 unit dose of Atrovent via hand held
28 nebulizer every 4 hours as needed for shortness of breath or wheezing.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 11. Complainant incorporates by reference as though fully set forth herein the allegations
4 contained in paragraphs 8 and 9 above.

5 12. Respondent is subject to disciplinary action pursuant to Code section 2878,
6 subdivision (a), in that on or about August 1, 2006, while employed as a licensed vocational nurse
7 at El Camino Care Center, Carmichael, California, Respondent committed acts constituting
8 unprofessional conduct, as set forth in paragraph 10 above.

9 **PRAYER**

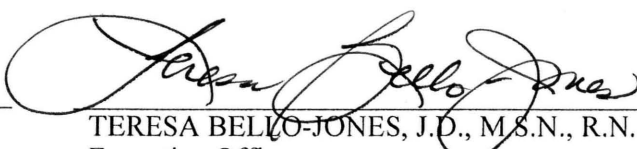
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
12 issue a decision:

13 1. Revoking or suspending Vocational Nurse License Number VN 184810, issued to
14 Daniel Rosete Gabriel;

15 2. Ordering Daniel Rosete Gabriel to pay the Board of Vocational Nursing and
16 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
17 pursuant to Business and Professions Code section 125.3;

18 3. Taking such other and further action as deemed necessary and proper.

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20 DATED: September 6, 2011


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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